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EXAMINER

LEWIS, JUSTIN V

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3722

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/531,628	Applicant(s) CRUDO ET AL.
	Examiner JUSTIN V. LEWIS	Art Unit 3722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>14 April 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. Applicant is advised that should claim 1 be found allowable, claim 15 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 15, 17, 22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,363,848 to Emmer ("Emmer").

Comment [M1]: You have the wrong statute here. It should be "(b)" instead of "(a)".

Regarding claim 1, Emmer teaches a binding element comprising: i) an elongated spine (strip 10); ii) at least two and no more than seven fingers (rings 11; note that Emmer teaches a binding element with "any number of rings," as set forth in col. 2, lines 46-47) forming closed loops with the spine (see figs. 1, 2 and 3), the fingers being adapted for movement between an open position and a closed position (see col. 4, lines 53-56), said fingers being spaced at said standard distances (see col. 2, lines 43-46);

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and iii) structure for maintaining the fingers in the closed position (note that strip, in its flattened position, keeps the rings in the closed position, as seen in figs. 1, 2, 4 and 7).

Regarding claim 2, Emmer teaches the binding element of claim 1 wherein the spine (strip) and fingers (rings) are unitarily formed of a polymeric material (see col. 2, lines 43-46).

Regarding claim 15, Emmer teaches the binding element of claim 1 further comprising a structure (strip) to secure the fingers (rings) in the closed position (note that strip, in its flattened position, keeps the rings in the closed position, as seen in figs. 1, 2, 4 and 7) .

Regarding claim 17, Emmer teaches the binding element of claim 15 wherein each finger (ring) comprises a pair of finger elements (portions 12), at least one pair of finger elements having a mating structure positioned at its distal ends (see col. 2, lines 51-55), the structure to secure comprising the mating structure (given that the ring portions [upon which the mating structure components are located] are integrally formed with and extend from the strip, the structure to secure comprises the mating structure).

Regarding claim 22, Emmer teaches the binding element of claim 15 wherein the structure (strip) to secure releasably secures the fingers in a closed position (see col. 4, lines 53-56).

Regarding claim 24, Emmer teaches the binding element of claim 1 wherein each finger (ring) comprises a pair of finger elements (portions 12) extending from the elongated spine elements (longitudinal halves of strip) respectively (see figs. 1-5).

4. Claims 1, 15-16 and 18-23 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,878,816 to Panfil ("Panfil").

Regarding claim 1, Panfil teaches a binding element comprising i) an elongated spine (plate 4); ii) at least two and no more than seven fingers (ring posts 12; note that Panfil teaches the use of a "desired number of ring posts," as set forth in col. 1, lines 38-39) forming closed loops with the spine (see figs. 1 and 3), the fingers being adapted for movement between an open position and a closed position (see col. 2, lines 21-27), said fingers being spaced at standard distances (see fig. 1); and iii) structure for maintaining the fingers in the closed position (locking member, as described in col. 1, lines 65-71).

Regarding claim 15, Panfil teaches the binding element of claim 1, further comprising a structure to secure the fingers in said closed position (locking member, as described in col. 1, lines 65-71).

Regarding claim 16, Panfil teaches the binding element of claim 15 wherein the spine (plate) and at least one finger (ring post) comprises a mating structure, and the structure to secure comprises the mating structure (see fig. 3).

Regarding claim 18, Panfil teaches the binding element of claim 15 wherein the spine (plate) comprises at least a pair of elongated spine elements (plate 4 and strip 8, as seen in fig. 1), and the structure to secure (locking member) comprises a coupling structure along the spine elements (see figs. 1 and 3).

Regarding claim 19, Panfil teaches the binding element of claim 15, further comprising end tab portions (end 17), said structure (locking member) to secure

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comprising a coupling structure (see col. 2, lines 25-31) along the end tab portions (see fig. 1).

Regarding claim 20, Panfil teaches the binding element of claim 15, wherein the structure to secure (locking member) comprises a biasing structure that biases the fingers in a closed position (see col. 1, lines 40-41).

Regarding claim 21, Panfil teaches the binding element of claim 15, wherein the structure to secure (locking member) substantially permanently secures the fingers in a closed position (see col. 1, lines 32-36).

Regarding claim 22, Panfil teaches the binding element of claim 15, wherein the structure to secure (locking member) releasably secures the fingers in a closed position (note that despite the "permanent" locking feature, rings may be opened by following the steps disclosed in col. 2, lines 18-24).

Regarding claim 23, Panfil teaches the binding element of claim 1, wherein the spine (plate) comprises at least two hingedly coupled, elongated spine elements (plate 4 and strip 8, hingedly connected by pin 7, as seen in fig. 1).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 11 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emmer.

Regarding claim 11, Emmer teaches the binding element of claim 1, wherein the fingers form a closed loop with the spine, the closed loop having a generally oval shape (note that Examiner considers the Emmer rings to have a "generally" oval shape) having a major diameter and a minor diameter (note that every oval shaped object inherently has major and minor diameters), but fails to specifically teach the major diameter being at least 0.05 inch greater than twice the back gauge, and the minor diameter being at least 0.10 inch greater than the back gauge. However, it would have been an obvious matter of design choice to have modified the Emmer ring in accord with the claimed dimensions, since Applicant has not disclosed that using rings having the claimed dimensions solves any stated problem or is for any particular purpose, and it appears that the Emmer rings would perform equally well as disclosed; accordingly, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the Emmer rings in accord with the claimed dimensions, in order to securely hold papers and provide a desirable appearance).

Comment [M2]: Since applicant claims "generally oval" this allows you to take the broadest interpretation of the claim limitations. Therefore, to the degree that applicant has claimed the shape as being generally oval, you can consider Emmer's shape as generally oval. You can use the rationale for the dimensions as stated for Watson.

Regarding claim 13, Emmer, as modified (in the manner and for the reason set forth in the rejection of claim 11, above), teaches the binding element of claim 11, but fails to teach the major diameter being no more than 0.50 inch greater than twice the back gauge, and the minor diameter being no more than 0.20 inch greater than the back gauge. However, using rings having the claimed dimensions is merely a matter of design choice, for the reasons set forth in the rejection of claim 11, above.

Regarding claim 14, Emmer, as modified (in the manner and for the reason set forth in the rejection of claim 11, above), teaches the binding element of claim 11, but fails to teach the major diameter being on the order of 0.05 inch greater than twice the back gauge, and the minor diameter being on the order of 0.15 inch greater than the back gauge. However, using rings having the claimed dimensions is merely a matter of design choice, for the reasons set forth in the rejection of claim 11, above.

Comment [M3]: See comments regarding claim 11. Emmer can be used alone with rationale for dimension as being obvious.

8. Claims 3-10 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emmer in view of Applicant's admission of prior art.

Regarding claim 3, Emmer teaches the binding element of claim 1 wherein each finger (ring) has a central axis (note that Examiner considers the central axis of each ring to be the vertical plane extending through the width of each ring when it is in its upright position in the completed binding element), the binding element comprising two fingers (note that as set forth in the rejection of claim 1, above, Emmer teaches "any number of rings," spaced apart from one another), but fails to teach the fingers having central axes spaced apart on the order of 2.75 inches (7 cm). However, Applicant's admission of prior art teaches that the claimed spacing is a standard ring spacing

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interval in loose-leaf perforation patterns, (see specification page 7, lines 15-18, and fig. 19). Accordingly, it would have been obvious to a person of ordinary skill in the art at the time of the invention to include two fingers, having central axes spaced apart on the order of 2.75 inches (7 cm), in order to accommodate standard loose-leaf pages with corresponding perforations for binder rings (note that the foregoing obviousness statement is made in light of the fact that Applicant has not disclosed any reason for the claimed spacing dimensions other than the obvious need to correspond with standardized [as noted in Applicant's admission of prior art] loose-leaf perforation patterns).

Comment [M4]: Where is this stated in the Specification? If applicant states this, then the rejection of this claim should be Emmer in view of Applicant's submission of Admitted Prior Art. You would need to point out in your rejection what page and line numbers state this.

Regarding claim 4, Emmer teaches the binding element of claim 1, comprising two fingers, but fails to teach the fingers having central axes spaced apart on the order of 8.5 inches (21.5 cm). However, Applicant's admission of prior art teaches that the claimed spacing is a standard ring spacing interval in loose-leaf perforation patterns, (see specification page 6, lines 25-28, and fig. 19). Accordingly, it would have been obvious to a person of ordinary skill in the art at the time of the invention to include two fingers, having central axes spaced apart on the order of 8.5 inches (21.5 cm), for the reason set forth in the rejection of claim 3, above.

Regarding claim 5, Emmer teaches the binding element of claim 1 comprising first, second and third fingers (rings), but fails to teach the first and second fingers having central axes spaced apart on the order of 4.25 inches (11 cm), and the second and third fingers having central axes spaced apart on the order of 4.25 inches (11 cm). However, Applicant's admission of prior art teaches that the claimed spacing is a

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standard ring spacing interval in loose-leaf perforation patterns, (see specification page 6, lines 25-28, and fig. 19). Accordingly, it would have been obvious to a person of ordinary skill in the art at the time of the invention to include three rings, the first and second fingers having central axes spaced apart on the order of 4.25 inches (11 cm), and the second and third fingers having central axes spaced apart on the order of 4.25 inches (11 cm), for the reason set forth in the rejection of claim 3, above.

Regarding claim 6, Emmer teaches the binding element of claim 1 comprising two fingers, but fails to disclose the fingers having central axes spaced apart on the order of 3.15 inches (8 cm). However, Applicant's admission of prior art teaches that the claimed spacing is a standard ring spacing interval in loose-leaf perforation patterns, (see specification page 7, lines 22-26, and fig. 19). Accordingly, it would have been obvious to a person of ordinary skill in the art at the time of the invention to include two fingers, having central axes spaced apart on the order of 3.15 inches (8 cm), for the reason set forth in the rejection of claim 3, above.

Regarding claim 7, Emmer teaches the binding element of claim 1 comprising first, second, third, and fourth fingers (rings) (note that as set forth in the rejection of claim 1, above, Emmer teaches "any number of rings," spaced apart from one another), but fails to teach the first and second fingers having central axes spaced apart on the order of 3.15 inches (8 cm), the second and third fingers having central axes spaced apart on the order of 3.15 inches (8 cm), and the third and fourth fingers having central axes spaced apart on the order of 3.15 inches (8 cm). However, Applicant's admission of prior art teaches that the claimed spacing is a standard ring spacing interval in loose-

leaf perforation patterns (see specification page 7, lines 22-28, and fig. 19).

Accordingly, it would have been obvious to a person of ordinary skill in the art at the time of the invention to include four fingers, the first and second fingers having central axes spaced apart on the order of 3.15 inches (8 cm), the second and third fingers having central axes spaced apart on the order of 3.15 inches (8 cm), and the third and fourth fingers having central axes spaced apart on the order of 3.15 inches (8 cm), for the reason set forth in the rejection of claim 3, above.

Regarding claim 8, Emmer teaches the binding element of claim comprising two fingers (note that as set forth in the rejection of claim 1, above, Emmer teaches "any number of rings," spaced apart from one another), but Emmer fails to disclose the fingers having central axes spaced apart on the order of 6.3 inches (16 cm). However, Applicant's admission of prior art discloses that the claimed spacing is a standard ring spacing interval in loose-leaf perforation patterns (see specification page 7, lines 22-28, and fig. 19). Accordingly, it would have been obvious to a person of ordinary skill in the art at the time of the invention to include two fingers, having central axes spaced apart on the order of 6.3 inches, for the reason set forth in the rejection of claim 3, above.

Regarding claim 9, Emmer teaches the binding element of claim 1 comprising five fingers linearly disposed including a central finger, a pair of outermost fingers, and a pair of intermediate fingers disposed between the central and outermost fingers (note that as set forth in the rejection of claim 1, above, Emmer teaches "any number of rings," spaced apart from one another), but Emmer fails to teach the outermost fingers having central axes spaced on the order of 4.25 inches (11 cm) from the central axis of

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the central finger, and the intermediate fingers having central axes spaced on the order of 3.25 inches (8.5 cm) from the central axis. However, Applicant's admission of prior art teaches that the claimed spacing is a standard ring spacing interval in loose-leaf perforation patterns (see specification page 6, lines 25-31, and fig. 19). Accordingly, it would have been obvious to a person of ordinary skill in the art at the time of the invention to include five fingers, the outermost fingers having central axes spaced on the order of 4.25 inches (11 cm) from the central axis of the central finger, and the intermediate fingers having central axes spaced on the order of 3.25 inches (8.5 cm) from the central axis, for the reason set forth in the rejection of claim 3, above.

Regarding Claim 10, Emmer teaches the binding element of claim 1 comprising seven fingers (rings) linearly disposed including a central finger, a pair of outermost fingers, a first pair of intermediate fingers disposed between the central and outermost fingers, and a second pair of intermediate fingers disposed between the central and the first pair of intermediate fingers (note that as set forth in the rejection of claim 1, above, Emmer teaches "any number of rings," spaced apart from one another), but Emmer fails to disclose the outermost fingers having central axes spaced on the order of 4.25 inches (11 cm) from the central axis of the central finger, the first set of intermediate fingers having central axes spaced on the order of 3.25 inches (8.5 cm) from the central axis, and the second set of intermediate fingers having central axes spaced on the order of 2.25 inches (5.5 cm) from the central axis. However, Applicant's admission of prior art teaches that the claimed spacing is a standard ring spacing interval in loose-leaf perforation patterns (see specification page 6, line 25- page 7, line 1, and fig. 19).

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Accordingly, it would have been obvious to a person of ordinary skill in the art at the time of the invention to include seven rings, the outermost fingers having central axes spaced on the order of 4.25 (11 cm) from the central axis of the central finger, the first set of intermediate fingers having central axes spaced on the order of 3.25 inches (8.5 cm) from the central axis, and the second set of intermediate fingers having central axes spaced on the order of 2.25 inches (5.5 cm) from the central axis, for the reason set forth in the rejection of claim 3, above.

Comment [M5]: Where is this stated in the Specification? If applicant states this, then the rejection of this claim should be Emmer in view of Applicant's submission of Admitted Prior Art. You would need to point out in your rejection what page and line numbers state this.

Regarding claim 25, Emmer teaches the binding element of claim 1, but fails to teach the spine (strip) having a length on the order of 8-16.5 inches (20-42 cm). However, Applicant's admission of prior art teaches that the claimed range of spine length corresponds with a standard range of page length in the loose-leaf binder field, (see specification page 5, lines 1-2). Accordingly, it would have been obvious to a person of ordinary skill in the art at the time of the invention to use a spine having a length on the order of 8-16.5 inches (20-42 cm), in order to accommodate standard loose-leaf pages (note that the forgoing obviousness statement is made in light of the fact that Applicant has not disclosed any reason for the claimed spine dimensions other than the obvious need to correspond with standardized [as noted in Applicant's admission of prior art] loose-leaf pages).

Comment [M6]: You cannot state obviousness rationale in an anticipatory rejection. You should reject this claim under 103 over Emmer.

Regarding claim 26, Emmer, as modified (in the manner and for the reasons set forth in the rejection of claim 25, above) teaches the binding element of claim 25 wherein the spine (strip) has a length on the order of 8.3 inches (21 cm), 8.5 inches (21.5 cm), 11 inches (28 cm), 11.7 inches (30 cm), 14 inches (35.5 cm), or 16 inches

(40.5 cm) (note that all claimed spine lengths fall within the range of lengths recited in the rejection claim 25, above).

Comment [M7]: You cannot state obviousness rationale in an anticipatory rejection. You should reject this claim under 103 over Emmer.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Panfil.

Panfil teaches the binding element of claim 1 wherein the fingers (ring posts) form a closed loop with the spine (plate), the closed loop having a generally "D" shape (see figs. 1 and 3, showing ring posts forming closed loops in the shape of a "D" rotated 90 degrees counter-clockwise) having a major diameter and a minor diameter (note that every "D"-shaped object inherently has major and minor diameters), but Panfil fails to teach the major diameter being at least 0.03 inch greater than twice the back gauge, and the minor diameter being at least 0.10 inch greater than the back gauge, the minor diameter being disposed between the spine and the fingers. However, it would have been an obvious matter of design choice to have modified the Panfil ring posts in accord with the claimed dimensions, since Applicant has not disclosed that using ring posts having the claimed dimensions solves any stated problem or is for any particular purpose, and it appears that the Panfil ring posts would perform equally well as disclosed).

Comment [M8]: You cannot state obviousness rationale in an anticipatory rejection.

10. Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Panfil in view of Applicant's admission of prior art.

Regarding claim 25, Panfil teaches the binding element of claim 1, but fails to teach the spine (plate) having a length on the order of 8-16.5 inches (20-42 cm). However, Applicant's admission of prior art teaches that the claimed range of spine length corresponds with a standard range of page length in the loose-leaf binder field.

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(see specification page 5, lines 1-2). Accordingly, it would have been obvious to a person of ordinary skill in the art at the time of the invention to use a spine having a length on the order of 8-16.5 inches (20-42 cm), in order to accommodate standard loose-leaf pages (note that the forgoing obviousness statement is made in light of the fact that Applicant has not disclosed any reason for the claimed spine dimensions other than the obvious need to correspond with standardized [as noted in Applicant's admission of prior art] loose-leaf pages).

Comment [M9]: You cannot state obviousness rationale in an anticipatory rejection.

Regarding claim 26, Panfil, as modified (in the manner and for the reasons set forth in the rejection of claim 25, above), teaches the binding element of claim 25 (see rejection of claim 25, above) wherein the spine (plate) has a length on the order of 8.3 inches (21 cm), 8.5 inches (21.5 cm), 11 inches (28 cm), 11.7 inches (30 cm), 14 inches (35.5 cm), or 16 inches (40.5 cm) (note that all claimed spine lengths fall within the range of lengths recited in the rejection of claim 25, above).

Comment [M10]: You cannot state obviousness rationale in an anticipatory rejection.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUSTIN V. LEWIS whose telephone number is (571)270-5052. The examiner can normally be reached on M-F 7:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JVL/**Comment [M11]:** Your initials are not in forward and backward slashes.

/Monica S. Carter/
Supervisory Patent Examiner, Art Unit 3722